

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

STATE OF INDIANA,  
*ex rel.* Steve Carter, Attorney General of Indiana,  
and the CITY OF EAST CHICAGO,  
*ex rel.* Steve Carter, Attorney General of Indiana,

Plaintiffs,

vs.

Cause No.

ROBERT A. PASTRICK; TIMOTHY W. RAYKOVICH;  
EDUARDO MALDONADO; FRANK KOLLINTZAS;  
ADRIAN SANTOS; JOE DE LA CRUZ;  
JOSE VALDEZ, JR.; PEDRO PORRAS;  
GEORGE E. WEEMS; FRANK MISKOWSKI;  
KIMBERLY K. ANDERSON;  
JAMES HAROLD FIFE, III;

A & A ENTERPRISES; ACE ENTERPRISE;  
A-1 DAVE'S TREE SERVICE, INC.,  
d/b/a DAVE'S TREE SERVICE;  
B & S CONSTRUCTION; CALUMET CONCRETE &  
MASONRY, INC; D/S COMMERCIAL EQUIPMENT &  
CONSTRUCTION; GARCIA LE & ASSOCIATES, LLC.,  
d/b/a GREAT LAKES ENGINEERING, LLC.;  
H & Y MAINTENANCE CO., INC.;  
J.G.M. ENTERPRISES, INC.; RESIDENTIAL  
CONSTRUCTION SERVICE, INC., a/k/a  
RESIDENTIAL ROOFING & CONCRETE, INC.;  
RIETH-RILEY CONSTRUCTION CO., INC.;  
ROGERS & SONS CONSTRUCTION, INC.;  
T.R.I., INC.;  
WINDSTORM ENTERPRISES, INC.;  
ST. PAUL FIRE AND MARINE INSURANCE;

and DEFENDANTS A through Z,

Defendants.

**PLAINTIFFS' MOTION FOR PRESERVATION OF RECORDS**

Plaintiffs, the State of Indiana, *ex rel.* Steve Carter, Attorney General of Indiana, and the City of East Chicago, *ex rel.* Steve Carter, Attorney General of Indiana, by counsel respectfully request this Court to issue an Order requiring the Defendants to preserve all records, including but not limited to paper documents, information from computer systems, removable electronic media and other locations, relating to this litigation. These documents and records are described in Appendix 1 attached hereto. In support of their Motion, Plaintiffs state:

1. This action is a claim alleging, *inter alia*, that each of the Defendants participated in an unlawful scheme to utilize City of East Chicago funds for non-city purposes. The Defendants are the only parties that have certain information in their possession that may be critical in proving the allegations in Plaintiffs' Complaint.

2. Document preservation orders "are common in complex litigations." *HJB, Inc. v. American Home Products Corp.*, 1994 WL 31005, \*1 (N.D. Ill. Feb. 1, 1994). The *Manual for Complex Litigation* states that document preservation orders are advisable at the earliest stages of a case: "Before commencement of discovery – and perhaps before the initial conference – the court should consider whether to enter an order requiring the parties to preserve and retain documents, files, and records that may be relevant to the litigation." MANUAL FOR COMPLEX LITIGATION (THIRD) § 21.442 (1995).

3. The entry of a document preservation order will not in any way prejudice the Defendants. However, the failure to enter a document preservation order may severely prejudice the Plaintiffs' ability to prove the allegations in their Complaint and could undermine the cause of justice by permitting the Defendants to destroy documentation of their illicit activities.

4. Plaintiffs have attached as Appendix 1 a list of all documents and records that should be ordered preserved. This list is neither overbroad nor overburdensome as it seeks to

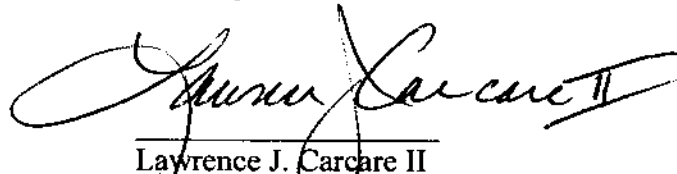
preserve only those documents and records that may directly relate to a claim by the Plaintiffs in their Complaint or a defense to such claims by the Defendants. As such, Appendix 1 is narrowly tailored to further the cause of justice and the ascertainment of truth.

5. The documents and records in Appendix 1 should not be destroyed absent order of this Court regardless of the Defendants' internal policies regarding the destruction of documents in the regular course of business.

6. Plaintiffs have filed contemporaneously herewith a Order for Preservation of Records that is patterned after, but not identical to, a model order found in the Manual for Complex Litigation 3d, § 41.34 (1995).

Respectfully submitted,

STEVE CARTER  
Attorney General of the State of Indiana

A handwritten signature in black ink, appearing to read "Lawrence J. Carcare II", written over a horizontal line.

Lawrence J. Carcare II  
Thomas M. Fisher  
Doug Webber  
U-Jung Choe  
*Deputy Attorneys General*

Office of the Attorney General of Indiana  
Indiana Government Center South, 5<sup>th</sup> Floor  
302 West Washington Street  
Indianapolis, Indiana 46204  
(317) 232-6201  
lccarcare@atg.state.in.us  
tfisher@atg.state.in.us  
dwebber@atg.state.in.us  
uchoe@atg.state.in.us

### Appendix 1

1. All financial documents, records, or audits relating to East Chicago's Gaming Incentives Expendable Trust Fund (the "Gaming Trust"), wherever located.
2. All financial documents, records, or audits belonging to any of the Defendants relating to all Individual and Company Defendants named in the Complaint.
3. All financial documents, records, or audits relating to any East Chicago fund or account that any of the Defendants or those under their control had or have access to or control over in any capacity.
4. All documents and records relating to the Gaming Trust, including its creation and operation.
5. All legal opinions or advice obtained by any of the Defendants relating to the legality of activities described in the Complaint.
6. All documents setting forth any of the Defendants' document destruction and retention policies.
7. Each of the Defendants' annual financial statements, annual reports, semiannual and quarterly financial statements, credit applications, tax returns, or any other financial document for the last ten years.
8. All documents, records, memorandums, emails, meeting minutes, personal or related calendars, etc. that reference using Gaming Trust funds to pay for non-public work, including but not limited to, tree trimming and concrete work as more fully described in the Complaint.

9. All documents and records regarding communications by and between any of the Defendants and any other named or unnamed Defendant relating to services (including tree trimming and concrete work) that were paid for by funds from the Gaming Trust.


10. All documents and records regarding communications by and between any of the Defendants and any other named or unnamed Defendant relating to this lawsuit filed by the State and East Chicago.

11. Defendants' business entity documents (if applicable), including but not limited to, articles of incorporation, by-laws, corporate charters, etc.

12. All minutes of meetings conducted by any of the Defendants in the last eight years, including all board meetings.

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was filed simultaneously with the Complaint and Summons to be served therewith to each named Defendant on this 3<sup>rd</sup> day of August 2004.

  
Doug Webber

Office of the Attorney General of Indiana  
Indiana Government Center South, 5<sup>th</sup> Floor  
302 West Washington Street  
Indianapolis, Indiana 46204  
(317) 232-6201